United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

75-1130

B
P/S

To be argued by
WILLIAM I. ARONWALD

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 75-1130

UNITED STATES OF AMERICA,
Appellant,

—v.—

PHILIP CRISPINO,
Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES OF AMERICA

PAUL J. CURRAN,
United States Attorney for the Southern District of New York, Attorney for the United States of America.

WILLIAM I. ARONWALD,
Special Attorney,
United States Department of Justice,

SIDNEY M. GLAZER,
VICTOR D. STONE,
Attorneys,
United States Department of Justice

TABLE OF CONTENTS

Table of Cases

PAGE

PAGE

STATUTES

Rules of Court

Reports

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 75-1130

UNITED STATES OF AMERICA,

Appellant,

—v.—

PHILIP CRISPINO,

Defendant-Appellee.

BRIEF FOR THE UNITED STATES OF AMERICA

Preliminary Statement

The United States of America appeals * from an Order entered on February 13, 1975, in the Southern District of New York, by the Honorable Henry F. Werker, United States District Judge, granting a motion to dismiss the indictment by defendant-appellee Philip Crispino and from an Order entered on March 24, 1975, in the Southern District of New York, by Judge Werker, denying a motion for reconsideration by the Government.

Indictment 74 Cr. 932, filed October 1, 1974, charged Philip Crispino in two counts, with violations of the Extortionate Credit Transaction Act (Title 18, United States Code, Section 894), and the Hobbs Act (Title 18, United States Code, Section 1951).

* This Court has jurisdiction to hear the Appeal under 18, U.S.C. § 3731.

Statement of Facts

On January 24, 1975, Philip Crispino filed a motion to dismiss (Rule 12(b)(2), Federal Rules of Criminal Procedure) the indictment, on the ground that Charles E. Padgett, a Special Attorney with the Organized Crime and Racketeering Section of the Criminal Division, United States Department of Justice, who had presented the case to the grand jury was not authorized to appear before the grand jury. On February 13, 1975, after reviewing memoranda submitted by the Government in opposition to the motion, Judge Werker granted the motion and dismissed the indictment on the ground that Mr. Padgett was not authorized to appear before the grand jury.

On March 6, 1975 the Government filed a motion for reconsideration of the Order dismissing the indictment. On March 25, 1975 Judge Werker denied the motion.

ARGUMENT

POINT I

A Justice Department Attorney, assigned by an Assistant Attorney General to investigate crimes and conduct grand jury proceedings may properly appear and question witnesses before the grand jury.

The issue raised on this appeal is whether Organized Crime Strike Force Attorney Charles E. Padgett was authorized to appear before, and present evidence to, a federal grand jury. This precise issue, involving other strike force attorneys, was raised in two other cases argued before this Court on March 18, 1975 and April 11, 1975. *In re Persico*, Dkt. No. 75-2030 (Smith, Timbers, C.J.J., Weinstein, D.J.);

In re DiBella, Dkt. No. 75-1121 (Gurfein, Hayes, Van Graafeiland, C.J.J.), respectively. *Persico* and *DiBella* are *subjudice.**

The attorney here, Charles E. Padgett, falls within the terms of Rules 6(d) and 54(c), F. R. Crim. P. as a government attorney who is permitted to participate in grand jury proceedings.** He was a regular Department of Justice Criminal Division Attorney assigned to its Organized Crime Section and to its field office in New York. In this role he operates under the supervision of the Assistant Attorney General, the Section Chief, the Deputy Section Chief and the Attorney-in-Charge of the field office.*** The latter

---

* This issue has also been raised before this Court in the case of *United States* v. *Eliano*, Dkt. No. 75-1035, which is scheduled for oral argument on April 29, 1975. This issue also has been recently considered by a number of District Courts in this Circuit and elsewhere. *Sandello* v. *Curran*, Misc. 11-188 (S.D. N.Y., February 27, 1975); *In re Langella*, 74 Cr. 638 (E.D.N.Y. February 27, 1975); *United States* v. *Brown*, 74 Cr. 867 (S.D. N.Y., February 24, 1975); *United States* v. *Jacobson*, 74 Cr. 936 (S.D.N.Y., March 3, 1975); *United States* v. *Lyberger*, 75 Cr. 25 (N.D. Ill., March 19, 1975); *United States* v. *Weiner*, 74 Cr. 336 (N.D. Ill., March 17, 1975); *United States* v. *Brodson*, 74 Cr. 98 (E.D. Wisc., January 31, 1975); *United States* v. *Kazonis*, 74-238-S (D. Mass., March 24, 1975); *In re DiGirlomo*, 74 Cv. 456-W-4 (W.D. Mo., March 26, 1975); *United States* v. *Badalamenti*, 73 Cr. 627 (D. N.J., April 15, 1975).

These decisions all appear to have been spawned by the opinions of Judge John W. Oliver in *United States* v. *Williams*, 74 Cr. 47-W-1 (W.D. Mo., October 21, November 15 and December 3, 1974).

** Rule 6(d) states that "attorneys for the government, the witness under examination, interpreters when needed and, for the purpose of taking the evidence, a stenographer or operator of a recording device may be present while the grand jury is in session." Rule 54(c) defines "attorney for the government" as including "an authorized assistant of the Attorney General" and "an authorized assistant of a United States Attorney."

*** The field offices were first established in 1966. See e.g. Annual Report of the Attorney General of the United States

[Footnote continued on following page]

coordinates his efforts with the local United States Attorney, who in turn generally signs applications for immunity orders and usually reviews and signs all indictments returned by the Grand Jury.

Each Organized Crime Section attorney who presents evidence before the grand jury does so only after he obtains, as indicia of his authority, a letter of authorization signed by an Assistant Attorney General and files it, along with a copy of his duly executed oath of office, with the Clerk of the District Court.* This procedure follows a long established practice in the Department of Justice. Under this practice, the letter commonly recites that the attorney, even a regular department attorney, has been "specially retained and appointed as a Special Attorney under the authority of the Department of Justice" and specially authorized and retained to conduct legal proceedings including grand jury proceedings and that the attorney is to serve "without compensation other than the compensation you

---

1973 pp. 78-81 which gives a report to Congress about the Operation of the field office. Hearings before a Subcommittee of the Committee on Government Operations. H.R. 91st Cong., 2d Sess., August 13 and September 15, 1970 at pp. 83-120 where Department Representatives testified about the strike force concept to a Congressional Committee. See also Note, *The Strike Force: Organized Law Enforcement* v. *Organized Crime*, 1970 Columbia Journal Law and Social Problems, 496.

* Neither a letter nor an oath is a prerequisite for a grand jury appearance by a government attorney. See *United States* v. *Morton Salt Co.*, 216 F. Supp. 250, 256 (D. Minn. 1962), *affirmed*, 382 U.S. 44 (1965). For example, Assistant United States Attorneys may appear before the grand jury in their home districts without letters of authorization. The oath and salary limitations of 28 U.S.C. 515(b), which is derived from the Act of June 22, 1870, discussed *infra*, apply only to the appointment of specially retained outside counsel, not officers of the Department. Prior to first entering on duty, each attorney of the Department executes the oath swearing to "faithfully discharge the duties of the office" he is about to enter.

are now receiving under existing appointment." * When the letter makes specific mention of the particular statutes into whose violation the grand jury intends to inquire, it also commonly includes a catch-all phrase, "other criminal laws of the United States." The letter, however, may not mention any specific statute and may simply recite that the inquiry covers various criminal laws of the United States.**

The primary issue here is whether such an attorney becomes an unauthorized person before the grand jury if his appointment letter authorizes him to conduct any kind of legal proceeding including grand jury proceedings "which United States Attorneys" are authorized to conduct rather than reciting some form of limitation on the inquiry that he may conduct. Appellee contends that as Mr. Padgett in his capacity as a government attorney is an "attorney specially appointed by the Attorney General" under 28 U.S.C. § 515 he must be "specifically directed by the Attorney General" to conduct some particular inquiry before the grand jury. Our position is that Padgett may properly appear before the grand jury as a government attorney under Rule 6 and conduct an inquiry in like manner as a United States Attorney without such specific direction. We first show that this authority derives from the power of the Attorney General to conduct federal criminal litigation.

---

* Anti-trust Division Attorneys generally are "specially retained and appointed under the authority of the Department of Justice" without any recitation that they are Special Attorneys.

** The practice of filing a letter of authorization does not stem from any statute or regulation. However, in *May* v. *United States*, 236 F.2d 495, 500 (8th Cir. 1916), the first case to interpret 34 Stat. 816 (1906), now 28 U.S.C. 515(a), the Eighth Circuit specifically asked that copies of the letter appointing specially retained counsel and his oath of office be presented "to any court in which the assistant attorney is called upon to act." Such a filing serves the function of keeping the district courts apprised of the particular government attorneys whether specially retained or a regular officer, who are appearing before its grand juries. Over the years, the letters of authorization have been modified.

We then focus on 28 U.S.C. 515, the statute considered by the district courts which have ruled against the government, and a related statute, 28 U.S.C. 543, and argue that, even under these specific statutes, the Attorney General has power to assign a department attorney to conduct grand jury inquiries in the same manner as a United States Attorney.

A. The Attorney General has the power to conduct federal criminal litigation and may assign his subordinate officers to conduct a grand jury proceeding with the same wide latitude of inquiry as the grand jury itself.

It is settled law that the Executive Branch—specifically, the Attorney General—has the power to conduct federal criminal litigation including absolute discretion whether to prosecute. It is "an executive function within the exclusive prerogative of the Attorney General." *United States* v. *Cox*, 342 F.2d 167, 190 (5th Cir. 1965), *cert. denied*, 381 U.S. 935 (1965) (concurring opinion of Judge Wisdom).

In *Cox*, the Court further held, "The Attorney General is the hand of the President in taking care that the laws of the United States in legal proceedings and in the prosecution of offenses, be faithfully executed (*United States* v. *Cox*, *supra*, 342 F.2d at 171).

Accordingly, under the broad ambit of statutes under which the Attorney General operates, he may appoint officials "to detect and prosecute crimes against the United States," 28 U.S.C. § 533. He has supervision of all litigation in which the United States is a party and is commanded to "direct all United States Attorneys, Assistant United States Attorneys, and special attorneys appointed

under section 543 . . . in the discharge of their respective duties" 28 U.S.C. § 519. He may appoint assistant United States Attorneys in any district in which they reside, see 28 U.S.C. § 545, or "appoint special attorneys, regardless of their residence, to assist United States attorneys when the public interest so requires" 28 U.S.C. §§ 542, 543. He may direct any officer of the Department of Justice to conduct and argue any case in any court of the United States, 28 U.S.C. § 518. He also may direct "any other officer of the Department of Justice or any attorney specially appointed by the Attorney General under law . . . when specifically directed by the Attorney General" to conduct any kind of legal proceedings "including grand jury proceedings", 28 U.S.C. 515. Moreover, since 28 U.S.C. 509, deriving from the Reorganization Acts of 1949 and 1950, vests all functions of the Department of Justice, with some exceptions in the Attorney General, the statute for delegation appearing in 28 U.S.C. 510 is essential so that he may "make such provisions as he considers appropriate authorizing the performance by an officer . . . of any function of the Attorney General." See *United States* v. *Giordano,* 416 U.S. 505 (1974). On his part, the United States Attorney, an appointee of the President, has the duty "except as otherwise provided by law" to prosecute all offenses against the United States within his district, 28 U.S.C. 547.

Recently, the Supreme Court considered these principles and some of these statutes in ruling on the justiciability issue involving the Watergate Special Prosecutor and the President in *United States* v. *Nixon,* 94 S. Ct. 3090 (1974). The Supreme Court unequivocally stated that "the Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute." It also pointed out that:

> Under the authority of Art. II, § 2, Congress has vested in the Attorney General the power to conduct the criminal litigation of the United States Govern-

> ment. 28 U.S.C. § 516. It has also vested in him the power to appoint subordinate officers to assist him in the discharge of his duties. 28 U.S.C. §§ 509, 510, 515, 533. Acting pursuant to these statutes, the Attorney General has delegated the authority to represent the United States in these particular matters to a Special Prosecutor with unique authority and tenure.

Clearly therefore, the Attorney General has authority to assign other officers of the Department of Justice, not only under 28 U.S.C. 515, but also under the other statutes giving him power over criminal litigation. If it were otherwise, then his broad power to conduct criminal litigation would be seriously hampered at its inception—the initiation of a criminal case by presenting evidence before grand juries.

We have focused so far on the general authority of the Attorney General over federal criminal cases. But this power may not be considered in a vacuum. Not only may no serious criminal case be commenced without a grand jury indictment, but a grand jury itself has wide latitude to conduct an inquiry into violation of criminal laws. As the Supreme Court recently observed in *United States* v. *Calandra*, 414 U.S. 338, 343 (1974):

> Traditionally the grand jury has been accorded wide latitude to inquire into violations of criminal law. No judge presides to monitor its proceedings. It deliberates in secret and may determine alone the course of its inquiry. The grand jury may compel the production of evidence or the testimony of witnesses as it considers appropriate, and its operation generally is unrestrained by the technical procedures and evidentiary rules governing the conduct of criminal trials. "It is a grand inquest, a body with powers of investigation and inquisition, the scope of whose inquiries is not to be limited narrowly by

> questions of propriety or forecasts of the probable result of the investigation, or by doubts whether any particular individual will be found properly subject to an accusation of crime." *Blair* v. *United States*, 250 U.S. 273, 282 (1919).

Both the power of the Attorney General to designate an attorney to conduct a grand jury inquiry and the power of the grand jury to investigate would be circumscribed, despite the principles expressed in *Calandra* and *Blair*, if the Attorney General could not direct that his assigned officer could question as broadly as the scope of the inquiry. It would restrain the inquiry with a "technical procedural" rule—the scope of the authority of the Justice Department lawyer. It would mean that questions by jurors themselves outside these bounds would be out of order. It would require that the inquiry "be limited narrowly by . . . forecasts of the probable results of the investigation" despite the fact that the jury's role is to find probable cause. *United States* v. *Dionisio*, 410 U.S. 1 (1973).

Perhaps no argument speaks more clearly to the unique power vested in the Attorney General as does the holding of Judge Learned Hand in *Sutherland* v. *International Insurance Co. of New York*, 43 F.2d 969 (2d Cir. 1930). Therein Judge Hand stated: "The Attorney General has powers of general superintendence and direction over district attorneys (Title 5, U.S. Code, § 317) and may directly intervene to conduct and argue any case in any court of the United States (Title 5, U.S. Code, § 309). . . . Thus, he may displace district attorneys in their own suits, dismiss or compromise them, institute those which they declare to press. No such system is capable of operation unless his powers are exclusive. . . . His powers must be co-extensive with his duties. And so, quite aside from the respectable authority that confirms our view, we should have had no doubt that no suit can be brought except [when] the At-

torney General, his subordinate, or a district attorney under his 'superintendence and direction', appears for the United States." (*Sutherland* v. *International Insurance Co. of New York, supra*, 43 F.2d at 970-71). We submit, therefore, that the Attorney General's power to assign attorneys to a grand jury inquiry is of necessity as broad as the inquiry itself or, in other words, as broad an inquiry as "United States Attorneys are authorized by law to conduct."

B. Apart from other statutes, the plain language of 28 U.S.C. 543 and 28 U.S.C. 515 gives the Attorney General power to assign government attorneys to conduct any kind of legal proceedings which United States Attorneys are Authorized to conduct.

Turning from the broad statutory framework under which the Attorney General conducts the criminal litigation of the United States and focusing on the statutes to which the recent decisions of the district courts have directed their attention, 28 U.S.C. 515 and 543, the plain language of these statutes show that the Attorney General has the power to assign an attorney of the Department of Justice to conduct a grand jury inquiry with the same breath as an inquiry conducted by a United States Attorney.

1. Section 543 gives the Attorney General power to appoint "attorneys to assist United States Attorneys when the public interest so requires." This grant of power is similar to his authority under section 542 to appoint Assistant United States Attorneys "when the public interest so requires." Neither statute contains any words of limitation on the power of these appointees to conduct criminal proceedings, including grand jury proceedings. We are aware of no authority that suggest that an Assistant United States Attorney cannot conduct a broad grand jury inquiry by virtue of his office. A departmental or special attorney appointed under section 543 would likewise be subject to

no limitation. We submit that the letter of appointment of Mr. Padgett can reasonably be read to be an appointment under this section.

There remains the question of whether the organizational structure of the organized crime strike forces precludes a conclusion that its attorneys were appointed to "assist" the United States Attorney. In our view, a finding that they are endeavoring to investigate and prosecute "organized crime" in a particular district constitutes assistance to the United States Attorney for that district. In any event, whereas the United States Attorney reviews and signs all indictments and the organized crime prosecutions are coordinated with him, it is clear that the attorneys of the strike force are "assisting" the United States Attorney.

In short, as Judge Frankel observed in *United States* v. *Jacobson*, *supra* (slip opinion pp. 3-4):

> Judge Judd in *United States* v. *Albanese*, 74 Cr. 69 (E.D.N.Y.), noted the broad authority of the Attorney General under 28 U.S.C. §§ 542 and 543(a) to appoint Assistant United States Attorneys and "attorneys to assist United States Attorneys" all over the country. The thrust of this statutory framework is against the straitened and sharply technical view urged by our movant. The head of a Department for a nation of over 213,000,000 people ought not to be required, either personally or through the Presidential appointees in his sub-cabinet posts, to appoint attorneys, one by one for specific cases. To be sure, large powers may be abused. Equally surely, and sadly, monstrous abuses have lately happened. But we must go on. It will not do for the judges to strain for grammatical traps to find violations of the Congressional will where (a) the statutory text compels no such finding, (b) the Congress is entirely

content with the questioned action and could otherwise readily stop it, and (c) the result of the technical obstruction would be at best a temporary drag upon enforcement of the criminal law.

2. Section 515(a) provides that the "Attorney General or any officer of the Department of Justice, or any attorney specially appointed by the Attorney General under law, may, when specifically directed by the Attorney General, conduct any kind of legal proceedings, civil or criminal, including grand jury proceedings and proceedings before committing magistrates, which United States attorneys are authorized by law to conduct, whether or not he is a resident of the district in which the proceedings is brought." The language of Section 515(a) thus expressly provides that an attorney may be "specifically designated" to conduct "any kind of legal proceedings . . . which United States attorneys are authorized by law to conduct", and the letters of authorization in question expressly state the attorney is "specifically authorized and directed to file informations . . . and to conduct . . . any kind of legal proceedings . . . including grand jury proceedings . . . which United States Attorneys are authorized to conduct." The plain meaning thus permits the Attorney General to give the assigned attorney a specific direction to conduct grand jury proceedings like the United States Attorney. Upon this basis, alone, the letter of authorization was sufficient.

However, even if the words "specifically directed" are read to require a specific limitation in the proceedings to which a special attorney is assigned, as the district court concluded below, it does not follow that this construction is applicable to regular attorneys of the Department of Justice. The statute applies to three categories of attorneys, the Attorney General, any officer of the Department of Justice, and an attorney specially appointed

by the Attorney General. The phrase "specifically directed" obviously does not apply to the Attorney General himself. Since section 510, permits him to delegate this power to other officers of the department, there is no reason to read section 515(a) to make the phrase "specifically directed" apply to "any officer of the Department of Justice". In other words, if "specifically directed" is a limitation, it should be read to be applicable in the words of the statute only to "any attorney specially appointed by the Attorney General under law (who) may, when specifically directed conduct any kind of legal proceeding." Again under this reading, Mr. Padgett had legal authority to conduct a broad grand jury inquiry. As a regular attorney in the Department of Justice, he qualifies under common usage as an officer of the Department of Justice. See e.g. the use by the Supreme Court of that term in *United States* v. *Giordano*, *supra*, and the discussion of the 1870 Act creating the Department of Justice, *infra*.

In sum, as Judge Pollock construed this section in *United States* v. *Brown*, *supra*, slip opinion pp. 12-13:

> "Since the statute does not confine its application to particular facts or particular defendants, it would appear appropriate for the Courts to implement the public policies to be served through Strike Forces by upholding a broad grant of authority and to sustain a commission that directs members of the specially selected Strike Force to prosecute any kind of legal proceeding. Indeed to hold that such commissions are insufficiently specific would not serve any public purpose but might have mischievous and drastic effects as a precedent against the current needs of law enforcement across the county. No fundamental rights are at stake here that need be conserved in the constitutional interests of criminal targets. There is a strong public interest in imple-

> menting the broad purposes of the Congress and the executive by upholding the authority of the special prosecutors of the Strike Force.

Or, as Judge Frankel observed in *Jacobson, supra slip opinion* pp. 2-3:

> "As has been shown in the several opinions recently announced, the plain language of 28 U.S.C. § 515 is comfortably read to validate the questioned appointments of special attorneys. The special attorney involved here received a letter of authority which, in literal terms, "specifically directed * * * (the) conduct (of) any kind of legal proceeding, civil or criminal, including grand jury proceedings * * *." There is, to be sure, arguable ground for a contrary view. However, where the question is one of asserted deviation from the command of Congress, it is a matter of at least some significance that the appointment and widespread employment of Strike Force attorneys has been one of the most publicized activities of the Department of Justice during the last decade. Reports of the Attorney General have, as Judge Werker noted repeatedly highlighted these activities. Congress has been made clearly aware of the enterprise—through specific discussions at committee hearings as well as other means. The national operations of Strike Force attorneys have been funded without apparent question and with no intimation of doubt as to the authority on which these efforts were proceeding. "The repeated appropriations * * * not only confirms (*sic*) the departmental construction of the statute, but constitutes (*sic*) a ratification of the action * * *." *Brooks* v. *Dewar*, 113 U.S. 354, 361 (1941) (footnote omitted). See also *Fleming* v. *Mohawk Co.*, 331 U.S. 111, 116 (1947); *Isbrandtsen-Moller Co.* v. *United States*, 300

> U.S. 139, 147 (1937); *Holtzman* v. *Schlesinger,* 484 F.2d 1307, 1313 (2d Cir. 1973), *cert. denied,* 416 U.S. 936 (1974); *Orlando* v. *Laird,* 443 F.2d 1039, 1042-43 (2d Cir. 1971), *cert. denied,* 404 U.S. 869 (1971)."

Moreover, as the Court noted in *United States* v. *Brown, supra*, slip opinion pp. 9-10:

> "The statutory requirement of a specifically directed authorization was apparently enacted in an atmosphere of the appointment of individual special prosecutors with particularized experience for particular cases. But this should not be and has not been interpreted as a requirement to thwart the comprehensive sweep of the statutory language, which was to facilitate the government's prosecutorial efforts, when unleashed by the Attorney General to deal with rackets and organized crime through an elite corps of the government's prosecutors."

Finally, in *Brown, supra*, slip opinion p. 14, Judge Pollack citing *Haberman* v. *Finch*, 418 F.2d 664, 666 (2d Cir. 1969) noted:

> "It is a familiar maxim of statutory interpretation that Courts should enforce a statute in such a manner that its overriding purpose will be achieved, even if the words used leave room for a contrary interpretation".

The Government respectfully submits that the scope of Mr. Padgett's authority is not regulated or governed by his letter of authorization, which the Government contends is merely indicia of his authority, but rather by his superiors—including the Attorney General—in the Department of Justice. In *Sullivan* v. *United States,* 348 U.S. 170 (1954) the United States Attorney had presented evidence relating to violations of the Internal Revenue Code to a grand jury without having first obtained authorization to

do so from the Attorney General, as he was required to do by an Executive Order issued by the Attorney General. The grand jury filed an indictment. On appeal the failure of the United States Attorney to comply with the provisions of the Executive Order was asserted as grounds for dismissal of the indictment. In rejecting this claim the Court held at 173-74:

> "The evidence was presented by the District Attorney, who was a representative of the Department of Justice, notwithstanding that he failed to comply with the departmental directive. For this he is answerable to the Department, but his action before the grand jury was not subject to attack by one indicted by the grand jury on such evidence."

Indeed, in construing the purport of the Executive Order the Supreme Court noted that its purpose was to transfer responsibility for tax prosecutions to the Department of Justice and was not intended to direct how such responsibility should be exercised. By the same token it is submitted that Congress in enacting 28 United States Code § 515(a), and the other relevant statutes cited herein, merely defined the scope of the inherent power of the Attorney General as the Chief Executive of the Department of Justice and did not manifest any intent to direct how this power or responsibility was to be exercised. Thus, where a departmental or special attorney exceeds his authority, it is submitted that the matter is one which should more properly be considered by the Department of Justice rather than by the Courts.

C. The legislative history of 28 U.S.C. 515 does not undermine the broad statutory authority granted to the Attorney General to conduct the criminal litigation of the United States.

We believe that the plain wording of the statute does not require resort to the legislative history of section 515. However, we shall consider that history in light of the fact that it was the prime basis for Judge Werker's conclusion that the Attorney General has no power to give blanket authority to a Department of Justice attorney to conduct a grand jury inquiry in a particular judicial district. This history neither undermines the plain wording of this statute nor the broad statutory authority granted to the Attorney General to conduct criminal litigation. Rather, the history of the 1906 Act, from which section 515 originated, shows its purpose was to expand instead of contract the right of the Attorney General and his subordinates to conduct grand jury proceedings.

1. *The 1861 and 1870 Acts.* These two acts serve as a background to our consideration of the 1906 Act. In the Act of August 21, 1861, 12 Stat. 285, Congress provided that the Attorney General of the United States was "charged with the general superintendence and direction of the District attorneys . . . as to the manner of discharging their respective duties." He was also "empowered, whenever in his opinion the public interest may require it, to employ and retain (in the name of the United States) such attorneys and counselors-at-law as he may think necessary to assist the District Attorney in the discharge of their duties and shall stipulate with such assistant counsel the amount of compensation". The latter section which has remained substantially unchanged is now codified as 28 U.S.C. 543(a).

The Act of June 22, 1870, 16 Stat. 162, which created the Department of Justice resulted in large measure out of abuses in the employment of outside counsel, including the payment of excessive fees and the sometime inferior

quality of their services.* This legislation in section 5, 16

---

* See, *e.g.*, the following passages from the Congressional Globe:

> This bill . . . put an end to a system which might be perverted to purposes of favoritism.
>
> Under various laws, and sometimes, perhaps, without any very definite law, a practice has grown up largely since 1860 of giving employment to counsel for the Government in almost every conceivable capacity and under a great variety of circumstances—to counsel who are not officers of the Government, nor amenable as such. Under appropriations for collecting the revenues, and other general purposes, very large fees have been paid for services which could have been performed by proper law officers at much less expense.
>
> * * * * *
>
> The contingent funds of the Departments are now sometimes used to employ counsel. And in all the forms and under whatever authority counsel are employed there is now no limit on the fees that may be paid and none of the sanctions of official authority. Cong. Globe, 41st Cong. 2nd Sess. 3038 (1870): (House debates).
>
> One of the objects of this bill is to establish a staff of law officers sufficiently numerous and of sufficient ability to transact this law business of the Government in all parts of the United States. Id. at 3035.
>
> * * * * *
>
> Retainers of $3,000 and $7,500 have been sent to counsel in other parts of the United States. Some have rendered service, and some we cannot find rendered any at all . . . Id. at 3038-3039.
>
> * * * * *
>
> The design (of the bill) is to prevent the appointment of those who are not responsible men—that is, officers for temporary duties, and whose charges are in excess of the fees paid to regular officers in the way of salary. . . . The real object of this bill, to diminish the expense which the Government of the United States is now at for temporary legal assistants, and to substitute therefor a class of officers on fixed salaries who shall be regulated by law. I take it for granted, considering the highly respectable and discreet source from which this bill originates, that the object

[Footnote continued on following page]

Stat. 163, consolidated in a single department the regular salaried staff of government officers, who were empowered to attend to the interests of the United States "in any suit pending . . . or to attend to any other interest of the United States" under direction of and on behalf of the Attorney General.* With respect to the future expenditures for retention of outside (non-Department of Justice) counsel, to "assist in the trial of any case", Section 17 provided (16 Stat. 164) that the need for such counsel was to be publicly stated prior to their employment, and the scope of their commission was not to exceed this stated need:

> . . . no counsel or attorney fees shall hereafter be allowed to any person or persons, for services in such capacity to the United States, or any branch or department of the government thereof, unless hereafter authorized by law and then only on the certi-

---

of the bill is retrenchment. The object of the bill is the prevention of what I may call the sporadic system of paying fees to persons, not to speak disrespectfully of them, who may be called departmental favorites. It is to regulate that which I think is an abuse. * * * *

In case [special] deputies are absolutely needed . . . they are to have a special commission, and to act under the Attorney General. Id. at 4490 (Senate debates).

* In specific terms, Section 5 provided that:

. . . the Attorney General may, whenever he deems it for the interest of the United States, conduct and argue any case in which the Government is interested, in any court of the United States, or may require the Solicitor General or any officer of the Department of Justice to do so. And the Solicitor General, or any officer of the Department of Justice may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in any suit pending in any of the courts of the United States, or in the courts of any State, *or to attend to any other interest of the United States; for which service they shall receive*, in addition to their salaries, their actual and necessary expenses, while so absent from the seat of government, the account theerof to be verified by affidavit. (Emphasis added).

> ficate of the Attorney General that such services were actually rendered, and that the same could not be performed by the Attorney General, or Solicitor General, *or the officers of the department of justice, or by the district attorneys.* And every attorney and counsel [1] or who shall be specially retained, under the authority of the Department of Justice, to assist in the trial of any case in which the government is interested, shall receive a commission from the head of said Department as a special assistant to the Attorney General, or to some one of the district attorneys, as the nature of the appointment may require, and shall take the oath required by law to be taken by the district attorneys, and shall be subject to all the liabilities imposed upon such officers by law (Emphasis added).

In the Congressional debates, it was made clear that the Attorney General would be held responsible for the special need to expend funds to retain outside counsel and for the quality of their performance.* This was to be accomplished by requiring that the need for outside counsel and the purposes for which he was retained be specified on the face of each special commission "in order that [counsel] may be responsible to him [the Attorney General] and to the government for the performance of their

---

* "There will of course have to be employed some special assistants . . . they will be appointed by *special commission,* receiving a fee to be agreed upon or determined by the Attorney General, and by him alone, and which in no case will exceed the compensation properly allowable for the service rendered."

* * * * *

If the Attorney General cannot try the case and the emergency requires assistant counsel, he can employ [outside counsel]. It is then done by the head of the law department. . . . He is responsible as the chief law officer of the Government. If any error is committed we shall know who is chargeable with it. We

[Footnote continued on following page]

duties".* Thus, Congress in establishing the Department of Justice showed no concern that its employees would interfere with the functions of the District Attorneys and gave the Attorney General power to use the persons he employed to attend to any interest of the United States. The primary Congressional concern was that the commissions be granted to outside counsel employed by the Attorney General so that their responsibility to the Attorney General would be clearly evidenced.

2. *The Rosenthal, Cobban and Twining cases.* Three district court cases also are a background to consideration of the 1906 Act.

In *United States* v. *Rosenthal*, 121 Fed. 862 (C.C.S. D.N.Y., 1903), the district court, proceeding on what we view to be a variety of erroneous premises, dismissed an indictment because a specially retained "assistant to the Attorney General became in fact the chief officer in the conduct of the investigation before the grand jury. . . ." 121 Fed. 872. The district court's premises were that:

---

have then the assurance, if he be the proper person, that the office will be administered economically. Congressional Globe, supra at 3036-3037.

** These remarks came from the following statement in the Congressional Globe, *supra* at 3035:

> ". . . if the Attorney General, under the authority given him by existing law, shall employ assistant counsel in any district he shall designate those counsel as assistant district attorneys or assistants to the Attorney General, and give them commissions as such *in the special business with which they are charged, in order that they may be responsible to him and to the Government for the performance of their duties.* The committee have been convinced most thoroughly by our investigations that no person should be charged with the conduct of litigation in behalf of the United States unless he holds a commission under the United States and is responsible to the law and the proper authorities." (Emphasis added).

(1) the *Confiscation Cases*, 74 U.S. 454, 457 (1868) held that the Attorney General and his officers had no power over any case or authority to appear before a grand jury in a criminal proceeding until after indictment despite the various statutes giving the Attorney General power over "cases in any court" and "any other interest of the United States"; (2) the statute empowering the appointment of special attorneys only authorized them "to assist in the trial of any case"; and (3) officers of the Department of Justice were limited to persons appointed by the President and with the advice or consent of the Senate.

However, the issue decided in the *Confiscation cases* was that an Attorney General could dismiss a forfeiture suit over the objection of an informer. The facts thus do not involve, and the opinion does not discuss, the relative rights of the Attorney General vis-a-vis the United States Attorneys before grand juries. On the contrary, it repeatedly paraphrases the 1861 Act which provides that the Attorney General is responsible for the general supervision and ultimate control of all the duties of the United States Attorneys.

In addition, with respect to the language in Section 5 of the 1870 act which explicitly gave the Attorney General the right to "conduct and argue any case in any court" and "attend to any other interest of the United States," 16 Stat. 163, in *Rosenthal* the court merely adhered to its erroneous interpretation of the *Confiscation Cases* and flatly rejected the language in *Councilmen* v. *Hitchcock*, 142 U.S. 547, 563 (1892) which held that a "criminal case" includes grand jury proceedings.

Finally, as for the district court's narrow interpretation of the term "officers," Section 9 of the 1870 Act, 16 Stat. 163, after listing the officers of the Department of Justice that shall be appointed with the advice and

consent of the Senate, provides that "all the other officers" of the Department shall be appointed by the Attorney General.

Thereafter, *United States* v. *Cobban*, 127 F. 713, 717 (D. Mont. 1904), and *United States* v. *Twining*, 132 F. 129, 131 (D. N.J. 1904), both rejected the *Rosenthal* construction, of what is now 28 U.S.C. 543 and 515(b). *Cobban* concluded that a special assistant to the United States Attorney could properly appear before the grand jury and *Twining*, in overruling motions to quash indictments, concluded the Department of Justice could appoint a special assistant to the District Attorney under what is now 28 U.S.C. 543 and authorize him to appear before the grand jury.

3. *The Act of June* 30, 1906. The express purpose of the bill as reflected in the House Committee report supports the Government's position (H.R. Rep. No. 2901, 59th Cong. 1st Sess. p. 1)*:

> The purpose of this bill is to give to the Attorney General, or to any officers in his Department or to any attorney specially employed by him, the same rights, powers, and authority which district attorneys now have or may hereafter have in presenting and conducting proceedings before a grand jury or committing magistrate.

Nor is this broad purpose limited by the other language in the report, upon which Judge Werker relied in which the committee speaks of special counsel having "special fitness" to assist the Attorney General in a "special case". The statute also is not restricted by

---

* The majority and minority reports of House Committee that considered the 1906 Act which became Section 515(a) are set forth in Judge Werker's opinion in *Crispino* (slip opinion pp. 8-10, Note 21 at p. V).

the fact that the legislation was directed at the *Rosenthal* decision.

In the first place, when the Report discussed the employment of "special counsel," it was in fact concerned only with specially retained outside counsel. This obviously is the reason that the Report repeatedly cautions the Attorney General that the expanded use of specially retained counsel should be accompanied by the appropriate justifications on the record. Apparently, this Congress, like the 1870 Congress, was concerned about abuses in the employment of such counsel.*

Second, the Attorney General did not request that the right to appear before grand juries be granted or restored to himself or to the other salaried officers in his regular employ. Rather, as the report states:

> The Attorney General states that it is necessary . . . that he shall be permitted to employ special [outside] counsel to assist the district attorneys . . . and that such counsel be permitted . . . to appear before a grand jury either with the district attorney or alone.
>
> It seems eminently proper that such power and authority be given by law. It has been the practice to do so in the past and it will be necessary that the practice shall continue in the future. H. Rep No. 2901, *supra* at 2.

Indeed, the minority report, which the majority did not question, recognized that the Attorney General could ap-

---

* Specific justifications or limitations were not contained, nor found lacking, in the commission sent in *United States* v. *Crosthwaite*, 168 U.S. 375, 376, 377 (1897). There, the special counsel involved was not specially retained, but a regular salaried officer of the Department of Justice and not entitled to any extra compensation.

pear before a grand jury.* Thus, it is clear that Congress did not accept the construction in *Rosenthal, supra*, that the Attorney General and other officers of the Department could not participate in grand jury proceedings.

Third, the Report also states, *supra* at 2:

> The Attorney General states that it is necessary, in the due and proper administration of the law, that he shall be permitted to employ special counsel to assist the district attorney in cases which district attorneys *or lawyers* do not generally possess, and in cases of such usual (sic) importance to the Government, and that such counsel be permitted to possess all of the power and authority, in that particular case, granted to the district attorney, which, of course, includes his right to appear before a grand jury either with the district attorney or alone. (Emphasis added).

We submit that the other lawyers in the Department of Justice are "lawyers" referred to above. Such a reading shows that the Report acknowledged that the use of other department lawyers need not to be justified in the same manner as the use of specially retained counsel.**

---

* The minority report states in pertinent part:

> It seems to us that part of the bill as reported should be stricken out, especially in view of the fact that the Attorney General himself has the right in any case of sufficient importance to appear in person. H. Rep. No. 2901, *supra* at 3.

** The Senate version of the bill (S. 2969) was introduced on June 11, 1906 two weeks before the House bill (H.R. 17714) was passed and referred to the Senate. The Senate did not use the words "specifically directed by the Attorney General." See *Crispino, supra*, slip opinion Note 71. The Senate Report advised that it is frequently desirable and even necessary that the Attorney General detail an officer of the Department of Justice, or, where this is impractical, appoint a special assistant to the Attorney

[Footnote continued on following page]

Moreover, there is no suggestion in the report that the act was intended to modify or cutback on the right of a government attorney to appear before a grand jury and participate in other proceedings under what is now section 543.

As Judge Werker stated below, an attempt was made, in 1945, to amend then 18 U.S.C. § 310 [now 28 U.S.C. § 515(a)] so as to eliminate the phrase "when specifically directed by the Attorney General", by introducing legislation. The Senate Bill, S. 1519, 79th Cong., 1st Sess. (1945) was, on October 26, 1945, referred to the Committee on the Judiciary, but was never reported out of the Committee.* Although Judge Werker concluded that the failure on the part of Congress to enact the amending legislation constituted a tacit disapproval of efforts to dilute the statutory requirement, as the Supreme Court said in *Order of Conductors* v. *Swan*, 329 U.S. 520, 529 (1947), another situation where Congress did not enact amendatory legislation:

> ". . . These bills were sent to an appropriate committee, but were never reported out. It does not appear whether the bills died because they were thought to be unnecessary or undesirable. No hearings were held; no committee reports were made.

General, or special counsel to act independently of the United States Attorney, particularly in criminal matters and that the attorneys described in the bill should have the power to conduct proceedings before a grand jury. See, S. Rep. 3835, 59th Cong. 1st Sess. (1906). See *Crispino, supra* slip opinion, Note 17.

An earlier version of the bill (H.R. 11264) listed particular officers of the Department of Justice who could participate in grand jury and court proceedings. The fact that the bill as passed used the term "officers" rather than particular officers such as the Assistants Attorney General, is an indication that "officers" covers other attorneys in the Department of Justice.

* Such legislation was primarily sought to eliminate the paperwork involved in issuing these letters.

> Under such circumstances, the failure of Congress to amend the statute is without meaning for purposes of statutory interpretation."

D. Under the three decided appellate cases, the government attorney here properly appeared before, and presented evidence to, the grand jury.

The three appellate cases which have interpreted 28 U.S.C. 515 ruled that the assigned attorneys whether regular retained government attorneys or specially retained counsel could properly represent tthe government in the proceeding involved. The rationale of these decisions, however, has been different. But under all of the theories adopted, the government attorney here may properly appear and present evidence before the grand jury.

In *May* v. *United States*, 236 F. 495, 500 (8th Cir., 1916) one Robert Childs was specially retained at $25.00 per day plus expenses pursuant to a letter signed by an Assistant Attorney General, to assist in the preparation and trial "in the Eastern District of Missouri," of the so-called "Oleomargarine Cases". After stating that the 1906 Act permitted the Attorney General to retain special counsel "personally or through his lawful assistants, the court concluded (236 Fed. at 500):

> This is not a proceeding to try the title of Mr. Childs to the office of special assistant to the Attorney General for the purposes mentioned in the appointment. It is a motion to quash an indictment for the reason that an unauthorized person took part in the proceedings of the grand jury which resulted in the indictment. Such a motion only attacks the authority of Mr. Childs in a collateral way, and beyond all question he was a de facto officer, acting

> by color of authority, and his acts are valid until it is judicially declared by a competent tribunal in a proceeding for that purpose that he has no right to to the office, the duties of which he is performing.

Here, Mr. Padgett was more than a de facto officer. He was a regular Department of Justice attorney who under Judge Werker's opinion could investigate "organized crime" cases. Thus, assuming arguendo that his authority was excessive, it could not be subject to attack "in a collateral way".

In *Shushan* v. *United States*, 117 F.2d 110, 113-114 (5th Cir. 1941), *cert. den.*, 313 U.S. 574 (1941), the defendants alleged that three "special assistants to the Attorney General" participated in the proceedings before the grand jury without having been specifically directed to do so by the Attorney General. Each commission evidenced the appointment of the person named as "special assistant to the Attorney General" and specifically directed him to conduct in the Eastern District of Louisiana, proceedings in which the United States was interested, including grand jury proceedings. In some of the commissions there was mention of the mail fraud statute, in which the violations are stated to have been committed by named persons "and other persons unknown." None of the commissions evidencing appointment specifically referred to any person indicted. The Court in refusing to abate the indictment on this ground concluded (117 F.2d at 114):

> We think it appears that these persons had and acted in an official status with respect to this case, and that the authority of each extended specifically to appearing in grand jury proceedings in the Eastern District of Louisiana in prosecutions under the mail fraud statute. The mention of persons supposed to be guilty was too general to restrict the authority to cases against them only. When a grand

> jury, which is an inquisitorial body, begins an investigation it cannot be known in advance whom they will indict. . . . The words of Section 310, "When thereunto specifically directed by the Attorney General, [to] conduct any kind of legal proceeding", *are mainly* for the protection of the United States. They do not require the naming of the persons or the particular cases to be prosecuted. Mail fraud cases in the Eastern District of Louisiana were specifically enough mentioned here, and we think it would be going too far to hold, at the instance of the accused, that the appointees were exceeding their authority in conducting this proceeding. (Emphasis supplied)

The instant case, as we have argued *supra,* clearly fits under the rationale that the inquisitorial nature of the grand jury makes it impossible for it to know in advance whom it will indict. The present letter, to be sure, is not confined to a particular character of cases such as mail fraud cases. But the same reason, the wide and broad range of the grand jury inquiry, makes it equally inappropriate in a broad inquisitorial inquiry to name the crimes under which any indictment may be brought. And, as we argue *infra*, under *Blair* v. *United States*, 250 U.S. 273 (1919), a defendant is not entitled to set the limits to such an inquiry. Finally, *Shushan* involved specially retained outside counsel, rather than regular Department of Justice attorneys, and since the statute is for "the protection of the United States", the Government is in no way injured when its regular attorneys appear before a grand jury pursuant to assignment. See our discussion of the 1870 Act, *supra.*

United States v. *Hall*, 145 F.2d 781, (9th Cir. 1944), *cert. den.*, 324 U.S. 871 (1945), is the only appellate case which concerned the use of officials of the Department of Justice, rather than specially retained outside counsel. Consequently, the opinion does not talk in terms of special

commissions, oath or salary limitations. Rather, it focuses on whether participation by officers of the Department of Justice was, in fact, authorized by the Attorney General. The Court stated (145 F.2d at 785):

> We are of the opinion and so hold that the authorization may be direct to each designated officer of the Department or it may be to an officer in immediate supervision over several other such officers and may include such authorization to any or all of the several. And we are further of the opinion and we so hold that such authorization need not be directed to specifically designated cases but may be designated and limited descriptively as was done in the instant case by the Attorney General when he authorized Mr. Brett and the attorneys under his immediate direction to act in the kind of cases, to wit such land cases as from time to time shall be assigned to the Los Angeles Lands Division office."

Here, the organizational makeup of the Criminal Division, its divisions into various sections, including the Organized Crime Section to which Mr. Padgett belonged, and over which the Assistant Attorney General presides, provides the designation that the *Hall* case would require.*

---

* Courts have previously upheld the authority of Departmental or Special Attorneys to appear before grand juries. See *United States* v. *Morse*, 292 F. 273 (S.D.N.Y., 1922); *United States* v. *Martins*, 288 F. 991 (D. Mass., 1923); *United States* v. *Amazon*, 55 F.2d 254 (D. Md. 1931); *United States* v. *Powell*, 81 F. Supp. 288 (D. Mo., 1948); *United States* v. *Morton Salt Co.*, 216 F. Supp. 250 (D. Minn., 1962); *United States* v. *Sheffield*, 43 F. Supp. 1 (S.D.N.Y. 1942). But see *United States* v. *Goldman*, 28 F.2d 424 (D. Conn., 1928); *United States* v. *Houston*, 28 F.2d 451 (D. Ohio, 1928); *United States* v. *Cohen*, 273 F. 620 (D. Mass., 1921).

POINT II

A defendant may not complain about the scope of authority of a Government Attorney assigned to conduct a Grand Jury inquiry.

Beyond any question of standing, no defendant has the right to nullify grand jury proceedings on the ground here urged. In *United States* v. *Kazonis, supra*, the Court said:

> "The tradition of the common law thus accommodated the presence in the grand jury of any lawyer chosen by the individual prosecutor for the purpose of presenting the evidence, without regard to his particular commission or authority. The presence of the Special Attorney is clearly no violation of a fundamental rule but is in accord with an ancient tradition."

Just as an indictment may not be quashed on the ground that there was inadequate or incompetent evidence before a grand jury, a grand jury inquiry or an indictment is not subject to challenge because of the scope of authority of a government attorney "specifically directed" by his superiors to appear before, and present evidence to, a grand jury. Such a challenge "would run counter to the whole history of the grand jury institution, in which laymen conduct their inquiries unfettered by technical rules. Neither justice nor the concept of a fair trial requires such a change." *Costello* v. *United States*, 350 U.S. 359, 364 (1956).

Moreover, the claim here falls into the category of a "housekeeping provision of the Department of Justice." If the letter of authority should have been limited to "organized crime" cases, in order to avoid the possibility of interference with a local United States Attorney who in turn is under the supervision of the Attorney General, this is a matter over which neither a witness nor a defendant

should have a right to complain. See *Sullivan* v. *United States, supra,* at 173 where the Supreme Court, in discussing an Executive Order which he United States Attorney had failed to comply with, stated:

> It was simply a housekeeping provision of the Department and was not intended to curtail or limit the well-organized power of the grand jury to consider and investigate any alleged crime within its jurisdiction. . . .
>
> . . . The evidence was presented by the District Attorney, who was a representative of the Department of Justice, notwithstanding that he failed to comply with the departmental directive. For this he is answerable to the Department, but his action before the grand jury was not subject to attack by one indicted by the grand jury on such evidence.

Here too there may be no valid attack on the grand jury proceedings on the grounds relied upon.

Finally, Judge Werker felt compelled to dismiss the indictment upon his finding that Mr. Padgett was not properly authorized to appear before the grand jury in connection with the investigation which resulted in the filing of the indictment herein.

Significantly, the defendant has not specified how he was prejudiced by the fact that Mr. Padgett, rather than an Assistant United States Attorney or a "duly authorized" Special Attorney, presented this case to the grand jury. Indeed there has been no suggestion that Mr. Padgett acted improperly in the manner in which he presented the evidence to the grand jury in this case.

Although it is true that the presence before the grand jury, of an "unauthorized person", is grounds for dismissal

of an indictment, *United States* v. *Edgerton*, 80 F. 374 (D. Montana 1897), the Government submits that so long as Mr. Padgett had a status recognized by Rule 6(d), F.R. Crim. P. and was "specifically directed" to appear by the Assistant Attorney General, he could appear and properly present evidence before the grand jury. *May* v. *United States*, *supra*, at 500; *United States* v. *Kazonis*, *supra*.*

CONCLUSION

The orders of the District Court should be reversed.

Respectfully submitted,

PAUL J. CURRAN,
United States Attorney for the Southern District of New York, Attorney for the United States of America.

WILLIAM I. ARONWALD,
Special Attorney,
United States Department of Justice,

SIDNEY M. GLAZER,
VICTOR D. STONE,
Attorneys,
United States Department of Justice.

---

* Those cases relied upon by Judge Werker are, it is submitted, clearly distinguishable from the instant case. See e.g., *United States* v. *Isaacs*, 347 F. Supp. 743 (N.D. Ill. E.D., 1972) (three unidentified persons, one of whom was an I.R.S. agent present in grand jury during testimony of witness); *United States* v. *Borys*, 169 F. Supp. 366 (D.C. Alaska, 1959) (mother of child witness present during child's testimony); *United States* v. *Carper*, 116 F. Supp. 817 (D.C. Dist. of Cal., 1953) (three deputy marshals in grand jury during testimony of witness); *United States* v. *Bowdach*, 324 F. Supp. 123 (S.D. Fla., 1971) (F.B.I. agent present during testimony of witness).

★ U. S. Government Printing Office 1975— 614—791—1135